

California Regional Water Quality Control Board
Santa Ana Region

August 22, 2003

ITEM: 14

SUBJECT: Status of Efforts to Require Suspected Dischargers to Investigate
Perchlorate Pollution in the Rialto, Colton and Chino Groundwater
Subbasins

DISCUSSION:

At the July 1, 2003 Board meeting, staff reported that, pursuant to Section 13267 of the California Water Code, the Executive Officer had issued a total of eighteen Investigation Orders to suspected dischargers regarding the perchlorate pollution in the Rialto, Colton and Chino Groundwater Subbasins. On July 18, 2003, an additional Investigation Order was issued to Mr. Thomas O. Peters. Mr. Peters is the owner of the Rialto property that is leased and occupied by James Souza/Astro Pyrotechnics fireworks manufacturing company. The Investigation Order required that a work plan for a soil and groundwater investigation be submitted by August 29, 2003.

Identified below is the status of the investigations for those suspected dischargers that have conducted activities or communicated with staff since the last Board meeting:

Mr. Wong Chung Ming, Rialto property owner

Mr. Wong Chung Ming (known as Mr. Wong) is the owner of the 160-acre site that is currently leased and occupied by American Promotional Events, Inc. – West (APE – West), and Pyro Spectaculars by Souza. The Executive Officer issued an Investigation Order to Mr. Wong on June 12, 2003. Mr. Wong resides in Hong Kong, and is represented by his local agent and business partner, Mr. Dennis Kwan of Monterey Park, California. Upon receipt of the Investigation Order, Mr. Kwan originally indicated to Board staff that he would comply with the Order by hiring a consultant to prepare and submit a work plan for a soil and groundwater investigation at the 160-acre property. The specified due date for the work plan was August 13, 2003. Board staff contacted Mr. Kwan on August 4, 2003 to determine the status of Mr. Wong's efforts to comply with the Investigation Order. Mr. Kwan informed staff that Mr. Wong is not willing to comply with the Order. Therefore, staff intends to prepare a Notice of Violation informing Mr. Wong that an Administrative Civil Liability Complaint is being prepared.

Occupants of Former Storage Bunkers

In June 2003, the Executive Officer issued Investigation Orders to six occupants of the former storage bunkers in Rialto. The Orders required that these six parties submit records of their historical activities at the former storage bunkers by July 31, 2003. The status of these Investigation Orders is as follows:

- ETI Explosives/Golden State Explosives, Inc. – submitted response July 31, 2003.
- Contractors Cargo Co - submitted response July 31, 2003.
- The Ensign-Bickford Co - submitted response July 31, 2003.
- Marquardt Co. – no response.
- W.A. Murphy - submitted response July 31, 2003.
- Whittaker - submitted response July 30, 2003.

Staff are currently reviewing the submittals that were received, and preparing a Notice of Violation for the Marquardt Company.

County of San Bernardino

In 2002, the County completed preliminary groundwater investigations of their property. On November 15, 2002, an additional work plan was submitted. The Regional Board adopted Cleanup and Abatement Order (CAO) R8-2003-0013 on January 17, 2003, which, in part, required implementation of the work plan after it was approved by the Executive Officer. On January 31, 2003, the Executive Officer approved the work plan. In February 2003, the County submitted a petition to the State Board regarding the CAO, but stated they were supportive of the CAO and intended to comply with the CAO. On June 10, 2003, Board staff filed a response to the petition and submitted the administrative record to the State Board. On June 17, 2003, the County requested that the State Board hold the Petition in abeyance. The State Board agreed to hold the Petition in abeyance until June 23, 2005.

The County is currently conducting the work required under the CAO, and is in compliance with the approved project schedule for this phase of their investigation. Installation of four additional monitoring wells has been completed. The County's consultants have incorporated the most recent well data into their groundwater model, and will submit their results in the final report. The Executive Officer has extended the deadline for submittal of this report to August 31, 2003.

American Promotional Events, Inc. - West (APE - West)

APE - West submitted a work plan for additional soil investigation at their Rialto facility on July 14, 2003. Staff has reviewed the proposal and contacted APE's consultant to discuss the plan. Staff will inspect the proposed soil sampling location during the week of August 11, 2003, to evaluate the adequacy of APE's proposal.

Pyro Spectaculars by Souza and Astro Pyrotechnics

On March 3, 2003, the Executive Officer conditionally approved two work plans for Pyro Spectaculars and Astro Pyrotechnics that had been submitted on December 9, 2002. An additional sampling proposal for Pyro Spectaculars, a waste containment plan for Astro Pyrotechnics, and a time schedule for the investigation at each site were to be submitted to the Executive Officer by March 19, 2003.

The attorney for Pyro Spectaculars submitted a revised time schedule for completion of these tasks. The proposed schedule was not satisfactory, so Board staff contacted Pyro Spectaculars to modify this schedule. However, once the field investigation start-date was established, the attorney for Pyro Spectaculars and Astro Pyrotechnics submitted a request for a 45-60 day extension of the deadline. Pyro Spectaculars and Astro Pyrotechnics are currently in violation of the Investigation Order. Astro Pyrotechnics has submitted a certified report of waste containment for the site's perchlorate waste stream. Board staff are considering the extension request for conducting the field investigation.

Zambelli Fireworks

Pursuant to a 13267 Investigation Order, a work plan for a soil and groundwater investigation at the site of the Rialto storage bunker formerly used by Zambelli was due on January 31, 2003. Board staff met with the attorney for Zambelli in mid-January to discuss Zambelli's request for an extension of the submittal deadline. The extension was not granted. However, staff considered the attorney's explanation and the written request for extension, and determined not to take enforcement action for the delinquent report at that time.

In spite of numerous telephone and e-mail communications with the attorney, Zambelli remained delinquent in providing the required work plan. After a delay of almost five months, a work plan for a Phase 1 environmental assessment of Zambelli's former storage bunker area was submitted to Board staff on June 16, 2003. The work plan proposed a review of records, a site reconnaissance at the location of the former storage bunker, interviews with knowledgeable individuals, and submittal of a summary report, but failed to include a soil and groundwater investigation.

The work plan that was submitted by Zambelli was delinquent and inadequate, and did not comply with the requirements of the December 16, 2002 Investigation Order. Therefore, the Executive Officer issued an administrative civil liability complaint against Zambelli on July 28, 2003 for failing to comply with the Investigation Order. A hearing before the Board regarding this matter is scheduled for the Board meeting on August 22, 2003.

Emhart Industries, Inc./Black & Decker (former West Coast Loading Corporation/Kwikset)

Pursuant to a 13267 Investigation Order, a work plan for a perchlorate investigation at the former West Coast Loading Corporation (WCLC) facility was due on November 22, 2002. Emhart/Black & Decker submitted a Petition for Stay and for State Board Review of the 13267 Order. The State Board dismissed the Stay request on December 18, 2002. The State Board dismissed the Petition for State Board Review on July 7, 2003.

The Executive Officer will issue an administrative civil liability complaint against Emhart/Black & Decker for failing to comply with the Investigation Order by submitting the required work plan. A hearing before the Board regarding the administrative civil liability complaint will be scheduled for an upcoming Board meeting.

On April 11, 2003, Kwikset Corporation filed a Petition for Writ of Mandate in the State Superior Court, Riverside County, seeking an order requiring the Regional Board to issue a written order finding Kwikset not to be the legal successor of WCLC and that WCLC did not discharge perchlorate. The Attorney General's office is representing the Regional Board in this matter. Board staff has prepared the administrative record. This record and the Regional Board's written response were filed with the court on June 23, 2003. The State Attorney General's Office, on behalf of the Regional Board, filed a demurrer with the court in Riverside on July 14, 2003. A hearing in the matter of the demurrer will take place in Riverside on August 26, 2003.

At the August 22, 2003 Board meeting, staff will provide information on any further developments, and will continue to update the Board at future meetings on the progress of the perchlorate investigation efforts.